

DOCKET NO. 567460

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

MAYSOON MOUSA YOUSEF
D/B/A WEST SIDE STOP
PERMIT/LICENSE NO(s). Q606698
BF606699

JEFFERSON COUNTY, TEXAS
(SOAH DOCKET NO.458-08-0416)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this 26th day of September 2008, the
above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen Burger. The hearing convened on April 25, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 28, 2008. The Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Exceptions and Reply to Exceptions were filed to which the Administrative Law Judge Administrative Law Judge replied and recommended that no changes be made to the Proposal for Decision.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permits and/or licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on October 22, 2008 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 26 day of September, 2008, at
Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Ronald Monshaugen
ATTORNEY FOR RESPONDENT
1225 North Loop West, Ste. 640
Houston, TX 77008
VIA FACSIMILE: (713) 880-5297

Maysoon Mousa Yousef
D/B/A West Side Stop
RESPONDENT
1200 W 7th St.
Port Arthur, TX 77640
VIA FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Beaumont District Office

 SKP/aa

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

July 28, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

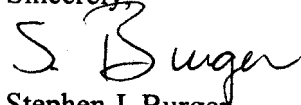
RE: Docket No. 458-08-0416; Texas Alcoholic Beverage Commission v. Maysoon Mousa Yousef D/B/A West Side Stop

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,



Stephen J. Burger
Administrative Law Judge

SJB/jh
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra Patton, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Ronald Monshaugen, Attorney at Law, Monshaugen & Van Huff, P.C., 1225 North Loop West, Suite 640, Houston,
Texas 77008 -**VIA REGULAR MAIL**

JUL 30 2008

SOAH DOCKET NO. 458-08-0416

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
VS.	§	
MAYSOON MOUSA YOUSEF	§	OF
D/B/A WEST SIDE STOP	§	
PERMIT/LICENSE NOS. Q-606698,	§	
BF-606699	§	
JEFFERSON COUNTY, TEXAS	§	
(TABC CASE NO. 567460),	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) requested that the permit and license of Maysoon Mousa Yousef, d/b/a West Side Stop (Respondent) be canceled because Respondent violated the Texas Alcoholic Beverage Code (Code) by: allowing the use or display of its permits by a person other than the person to whom the permits were issued; allowing the use of its license in the conduct of its business for the benefit of a person not authorized by law to have an interest in the license; and surrendering control of the employees, premises, or business of the permittee to persons other than the permittee.

The Administrative Law Judge (ALJ) finds that the Respondent's permit and license should be cancelled.

I. PROCEDURAL HISTORY AND JURISDICTION

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits convened April 25, 2008, at the State Office of Administrative Hearings (SOAH), 2020 North Loop West, Suite 111, Houston, Texas, before ALJ Stephen J. Burger. The record was kept open for closing briefs until May 28, 2008. The TABC was represented by attorney Sandra Patton. Respondent was represented by Ronald Monshaugen, attorney.

II. ALLEGATIONS AND LEGAL STANDARDS

Pursuant to the Notice of Hearing, the TABC alleges that between July 5, 2005, and July 12, 2007, Respondent: permitted the use or display of her license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license in violation of TEX. ALCO. BEV. CODE ANN. § 61.71 (a)(15); and consented or allowed the use or display of her permit by a person other than the person to whom the permit was issued. TEX. ALCO. BEV. CODE ANN. § 11.05.

The TABC also alleges that Respondent violated the following TABC Code section:

...It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices....Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful..... TEX. ALCO. BEV. CODE ANN. § 109.53.

Because of these alleged violations, the TABC requests the cancellation of Respondent's license and permit based on TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).

III. EVIDENCE, ANALYSIS AND RECOMMENDATION

A. Testimony of witnesses is summarized as follows:

Testimony of Maysoon Yousef

Maysoon Yousef is the Respondent, and the permit and license holder. She knows only a little English, and testified via an Arabic translator. In March of 2005, she bought the existing business from her brother Sari Yousef for \$35,000 worth of land in Palestine, (Middle East). She then applied for and was granted the license and permit. At the time, she was living in the U.S. She testified she has never worked at West Side Stop, which is a convenience store. She has one employee, Walid Mohammad, her brother-in-law. Walid runs the business for her, and keeps in touch with her when she is overseas in Palestine. Walid is paid \$250 per week. Walid's son and wife help at the store, but she claims they are not employees. Walid's son's name is Mousa. She claims that Walid has no authority to sell the store, and although he is in charge, it's her business.

She states that West Side Stop has two bank accounts at Chase Bank, one for the lottery tickets sold, and another for other accounts. She also states the Franklin bank account is her personal account. Mousa, the son of Walid, is authorized on the West Side Stop accounts, and Mousa was authorized to purchase a car, pay medical bills, pay college study aids, and pay his personal cell phone bill from West Side Stop accounts.

She has no knowledge regarding the child support checks to North Carolina written on the West Side Stop accounts, or the checks to Humble ISD. When she needs money in Palestine, she can write checks; she does not know anything about a check written for \$10,000 that was cashed in Jordan, apparently by her husband.

She states that in 2005, the year she was granted the permit and license, she spent about six months in the US; in 2006 and 2007, she was in the US twice for about 20 days to a month; and in 2008, she has been here just once, for this hearing. Her husband and children are in Palestine.

Maysoon Yousef states that she is the owner of the business and her brother-in-law Walid is the manager. Walid has authority to sign checks, but does not have authority to sell the store or share in losses or profits. She also stated she is a resident alien, but wants to become a US citizen and bring her family to the US. Her family depends on the income from West Side Stop.

2 Samira Mohammad

Samira Mohammad is the wife of Walid Mohammad, and the mother of Mousa. She is not employed by West Side Stop. She states that Walid gets \$250 per week from West Side Stop, and that it is their only income. Her cousin, Maysoon, helps out with bills, and they get food stamps. She states that a check to a hospital for \$375 was for her son's medical bills, and that when Maysoon is in the US, she stays with them.

3 Artie Freeman

Mr. Freeman is an enforcement agent with the TABC. He met Walid Mohammad in 2000 or 2001 during a routine inspection. Walid was his main contact at West Side Stop, and at the few contacts he had with Maysoon, Walid answered all the questions. He also saw Mousa at the store and a Ms. Garcia one time. This investigation started about a year ago, prompted by the absence of Maysoon, and the observance of Walid answering all the questions regarding West Side Stop when she was available. According to Mr. Freeman, Walid seemed to have all control over the business.

His investigation showed that in 2005, Walid was not eligible to apply for a license with TABC because of a felony conviction (check kiting). In 2006, Samari signed the renewal application for West Side Stop under a power-of-attorney document, which was rejected, and Maysoon traveled from Palestine to Texas to sign the renewal application.

Mr. Freeman discovered that according to passports, Maysoon spent six months in the US in 2005; in 2006, she spent 40 days in the US over two trips; and in 2007, she spent 15 days in the US.

He also testified that the tax returns show that Walid made \$13,000 in 2006. Walid also informed him that West Side Stop was also in the check cashing business.

Mr. Freeman testified he has not seen any benefits passing from West Side Stop to Maysoon.

4. Said Aboumerhi

Said Aboumerhi is the book keeper for West Side Stop. He also does the tax returns for Maysoon and Walid. He gave information regarding the returns.

5. Walid Mohammad

Walid Mohammad was the manager of West Side Stop through 2007. Regarding the child support payments made by West Side Stop, he stated they were on behalf of one of his cousins, an employee of West Side Stop, and were made pursuant to a court order. The rent-a-car payment was made to rent a vehicle when the van they were using for the business broke down. The two bank accounts at Chase and Franklin were for the lottery accounts, and the check cashing accounts. He went through a number of checks, and stated they were all made to

Maysoon for her benefit. Some were written in Palestine for cash, from proceeds from West Side Stop.

Walid admitted that on the Chase Bank account, Mousa, Maysoon, and himself all had authorization pursuant to the signature cards. He further stated his salary at West Side Stop was \$250 per week.

The check made payable to a law firm was for legal work for the benefit of his brother-in-law that was repaid.

B. ALJ's analysis and recommendation

The evidence shows that Respondent, Maysoon Yousef, has not lived in this country since at least 2006. According to the passport information, and the admission by Maysoon Yousef, she has spent about 40 days in Texas in 2006, and 15 days in Texas in 2007, the remainder of the time having resided in Palestine, (Middle East). She has admitted that her husband and children live in Palestine. Although she contends that she keeps in nearly daily telephone contact with Walid, the manager of West Side Stop, there is insufficient evidence of this, and the ALJ finds her testimony regarding this unpersuasive.

The few times Maysoon met with Artie Freeman, a TABC employee, she could not answer any questions regarding the business, all questions were being answered by Walid. Furthermore, Walid signed nearly all West Side Stop checks during the period in question.

It is clear from all the evidence that Maysoon Yousef has surrendered control of the employees, premises or business to persons other than the permittee in violation of TEX. ALCO. BEV. CODE ANN. § 109.53. The person she has surrendered control of the business to is Walid Mohammad.

The original application made by Maysoon Yousef in 2005, lists as her home address an address in Nederville, Texas. According to the evidence, in 2005, she spent six months of that year in Palestine. The later renewal applications also list her residence as Nederville, Texas, when the evidence reveals she only spent 40 days in Texas in 2006, and 15 days in Texas in 2007.

Regarding the penalty, the TABC recommended cancellation of the permit and license. The ALJ agrees.

IV. FINDINGS OF FACT

Maysoon Yousef, d/b/a West Side Stop, (Respondent) is the holder of a Wine Only Package Store Permit, Q-606698, and Beer Retailer's Off-Premise License, BF-606699, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 1200 W. 7th St., Port Arthur, Texas, 77640-4842.

2. On October 10, 2007, the TABC sent a Notice of Hearing to Respondent.
3. The October 10, 2007, Notice of Hearing contained a statement of the location and the nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the TABC.
4. On April 25, 2008, a public hearing was held in Houston, Texas, before Administrative Law Judge Stephen J. Burger. The TABC appeared through its staff attorney Sandra Patton. Respondent appeared through its attorney Ronald Monshaugen. Evidence was presented, and the record was kept open for closing briefs until May 28, 2008.
5. Between July 5, 2005, and July 12, 2007, Walid Mohammad was the manager of West Side Stop.
6. Between July 5, 2005, and July 12, 2007, Walid Mohammad operated West Side Stop, and controlled the employees, premises, and all operations of West Side Stop.
7. In 2005, Respondent Maysoon Yousef was in the state of Texas for six months, the remainder of the year residing in Palestine (Middle East).

8. In 2006, Respondent Maysoon Yousef was in the state of Texas for about 40 days, the remainder of the year residing in Palestine.
9. In 2007, Respondent Maysoon Yousef was in the state of Texas for about 15 days, the remainder of the year residing in Palestine.
10. Since at least July 5, 2005, Respondent Maysoon Yousef's husband and family have resided in Palestine.

Between July 5, 2005, and July 12, 2007, Respondent Maysoon Yousef did not control the employees, premises, or business of West Side Stop.

2. Between July 5, 2005, and July 12, 2007, Walid Mohammad signed nearly all checks on the accounts of West Side Stop.
3. On the license and permit applications of Respondent dated April , 2005, Respondent listed an address in Nederville, Texas, as her home address.

V. CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, §§ 6.01 and 11.61.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on the above Findings of Fact, between July 5, 2005, and July 12, 2007, Respondent surrendered control of the employees, premises and business of West Side Stop to Walid Mohammad, in violation of TEX. ALCO. BEV. CODE § 109.53.
5. Based on the above Findings of Fact, between July 5, 2005, and July 12, 2007, Respondent allowed the use or display of her permit by a person other than the person to whom the permit was issued, in violation of TEX. ALCO. BEV. CODE ANN. § 11.05.
6. Based on the above Findings of Fact, between July 5, 2005, and July 12, 2007, Respondent permitted the use or display of her license in the conduct of a business for the

benefit of a person not authorized by law to have an interest in the license, in violation of TEX. ALCO. BEV. CODE ANN. § 61.71 (a)(15).

7. Based on Conclusion of Law 4, 5, and 6, cancellation of Respondent's license and permit is warranted pursuant to TEX. ALCO. BEV. CODE ANN §§ 11.61 (b)(2) and 61.71(a)(1).

SIGNED July 28, 2008.

A handwritten signature in dark ink, appearing to read "S. Burger", is written over a horizontal line.

STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS